

APPEAL NO. 020882
FILED MAY 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 18, 2002. The hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on August 16, 2001, with an impairment rating (IR) of 29%, as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The appellant (carrier) appeals the determination, asserting that the designated doctor misapplied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) in arriving at the claimant's IR. The carrier requests adoption of the independent medical examination (IME) doctor's certification that the claimant reached MMI on June 21, 2001, with a 6% IR. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant reached MMI on August 16, 2001, with a 29% IR, as certified by the Commission-appointed designated doctor. The carrier specifically asserts that the designated doctor misapplied Table 51 of the AMA Guides, regarding cervical flexion, by failing to utilize an interpolation method to rate the claimant's loss of cervical range of motion (ROM). The designated doctor measured the claimant's maximum cervical flexion at 38E and assessed a 4% impairment in cervical flexion. Table 51 of the AMA Guides provides a 4% IR for 20E of flexion (loss of 40E of flexion) and a 2% IR for 40E of flexion (loss of 20E of flexion). The carrier contends that given the claimant's maximum cervical extension he is entitled to a 3% IR at most. The carrier cites no authority for its position, nor are we aware of any requirement that the designated doctor interpolate the claimant's rating for loss of cervical ROM. Indeed, we have upheld IRs under Table 51, like the rating in this case, when the measured ROM fell between the values provided in the AMA Guides and interpolation was not used. See Texas Workers' Compensation Commission Appeal No. 992223, decided November 15, 1999; Texas Workers' Compensation Commission Appeal No. 992694, decided January 18, 2000. The underlying rationale has been that a rating is assessed for the level of impairment that has been reached or exceeded but less than the next level. See Texas Workers' Compensation Commission Appeal No. 980894, decided June 17, 1999; Texas Workers' Compensation Commission Appeal No. 992482, decided December 16, 1999 (Unpublished). Accordingly, the designated doctor properly assessed a 4% impairment for cervical flexion under Table 51, given the claimant's maximum cervical flexion of 38E.

Next, the carrier asserts that the claimant was not entitled to a rating under Table 49 Section (II)(C) of the AMA Guides for an unoperated cervical disc lesion with medically documented pain. The carrier relies on a report from its peer review doctor, which states

that the claimant is entitled only to a lower rating under Table 49 Section (II)(B). We view the report of the carrier's peer review doctor as representing a difference in medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge